

PART 5315--CONTRACTING BY NEGOTIATION**PART 5315--CONTRACTING BY NEGOTIATION**

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SUBPART 5315.4--SOLICITATION AND RECEIPT OF PROPOSALS AND QUOTATIONS

5315.402 General. (h)(1) Responses received as a result of a proper notice of proposed sole source contract action shall be handled in the following manner:

(i) The contracting officer shall transmit the respondent's information to the technical personnel and shall request a written technical assessment of the information submitted.

(ii) The contracting officer shall use the technical assessment and other pertinent information to evaluate the response. The contracting officer's evaluation shall consider such factors as acquisition history, availability of procurement data, contractor capabilities, and the technical assessment.

(iii) The contracting officer shall consult with the local competition advocate.

(iv) Contractor responses to the synopsis, technical assessments, and the contracting officer's evaluation shall be included in the contract file.

(2) The contracting officer shall notify potential offerors that responded to a proper notice of proposed sole source contract action of the contracting actions resulting from the notice. Announcements of contract awards (see FAR 5.303) or letters to the responding potential offerors may be used. The contracting officer shall send a letter to each responding potential offeror in all cases where the estimated contract value is \$2,000,000 or greater.

5315.406 Preparing requests for proposals (RFPs) and requests for quotations (RFQs).

5315.406-2 Part I - The Schedule.

(a) Section A, Solicitation/contract form. Standard Form 33 or Standard Form 1447 shall be used as the prescribed form whenever a firm offer is solicited, regardless of the type of contract contemplated, except when it is contemplated that the procurement will be consummated by an order or modification to an existing contract. In such instances, a letter or message request for proposal may be used.

5315.406-5 Part IV - Representations and instructions.

(b) Section L, Instructions, conditions, and notices to offerors or quoters. When applicable, include the following in

this section:

(1) Cost or pricing data information when required by FAR 15.804 and 52.215-2.

(2) When industrial security verification is required, a statement that the offeror must possess the highest degree of security clearance stated in the DD Form 254, Contract Security Classification Specification.

(3) For major systems, specify the number of copies of proposals and major segments thereof that offerors must submit. The number of copies requested shall be limited to the minimum necessary for source selection. The contracting officer shall consider selective use of page limitations for management and technical proposals. Page limitations shall not be imposed for cost proposals.

(4) When the contracting officer decides that better cost realism and more accurate cost proposals would result from time-phasing the proposal submittals, a schedule that calls for submittal of the cost proposal 5 to 10 days after submittal of the technical/management proposal(s). In reaching this decision, the contracting officer should consider the complexity of the program/project and the source selection evaluation schedule.

(5) Source selection information, including the schedule of major source selection events included in the source selection plan as required by Appendix AA.

5315.410 Amendment of solicitation before closing date. Confirm in writing any amendment to a written Request for Quotation, by letter, automated format, or teletype.

SUBPART 5315.5--UNSOLICITED PROPOSALS

5315.506-90 Air Force procedures.

(a) Each major command, FOA, and DRU shall establish contact points and procedures for receipt and disposition of unsolicited proposals received locally, consistent with the provisions of FAR Subpart 15.5.

(b) The contact point for the receipt and disposition of all unsolicited proposals received at the Air Staff (HQ USAF) and Secretariat (SAF) is HQ AFMC/PKT, 4375 Chidlaw Road, Suite 6, Wright-Patterson AFB OH 45433-5006, (513) 257-8934, DSN 787-8934. HQ AFMC/PKT will review the proposal contents and determine the proper activity within the Air Force to evaluate and process the

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proposal. HQ AFMC/PKT shall acknowledge receipt of unsolicited proposals and forward each one to the processing activity in an expeditious manner.

(c) Unless otherwise directed by SAF/AQC, the cognizant contact point responsible for receipt and disposition of unsolicited proposals shall provide the Air Force's response to offerors.

SUBPART 5315.6--SOURCE SELECTION

5315.604 Reporting of source selection activity.

Contracting offices shall submit quarterly reports of projected source selection activity through the major command to SAF/AQCS. The report shall include each contract action during the next quarter where the instant contract value is expected to equal or exceed \$100 million (including options). The report shall provide the following information for each action: the program name/project title; the estimated dollar value of the instant contract action(s), including options; whether formal or streamlined source selection procedures will be used; the source selection authority; and the source selection schedule. Reports are due by the 15th of the first month of the quarter (i.e., October, January, April, and July). Negative reports are required.

5315.605 Evaluation factors.

5315.605-90 Air Force procedures for Lowest Cost (Price) Technically Acceptable Selections.

(a) Under Lowest Cost (Price)-Technically Acceptable selection procedures, award is made to the offeror with the lowest evaluated cost (price) which meets all the minimum mandatory criteria. This technique does not permit trade offs between cost (price) and technical items/factors/subfactors. Therefore, this technique may only be used when minimum mandatory criteria and standards can be established for all essential technical items/factors/subfactors (i.e. by establishing "pass-fail" or "go-no go" thresholds of acceptability for each item/factor/subfactor.)

(b) When accomplishing a Lowest Cost (Price)-Technically Acceptable selection, the following procedures apply:

(1) Section M of the solicitation must state that award will be made to the lowest evaluated cost (price) offer that meets all the minimum mandatory criteria in the solicitation;

(2) The technical team must establish the evaluation standards prior to beginning evaluation of the offers. This evaluation plan should contain sufficient detail to justify a

determination of minimum acceptability for each item/factor/subfactor;

(3) If it is necessary for the technical team to prepare Clarification Requests (CRs) and Deficiency Reports (DRs), a formal competitive range determination will be issued, discussions conducted with all offerors in the competitive range, as appropriate, and BAFOs requested;

(4) The technical team shall document the rationale evaluations in sufficient detail to explain each pass/fail decision; and

(5) The contracting officer will make the award decision and ensure all aspects of the award decision are properly documented.

5315.611 Best and final offers. (c)(i) Authority to approve requests for second or subsequent best and final offers (BAFO) for competitive negotiated acquisitions using formal source selection procedures is delegated to the HCA for all formal source selections except those for major, selected and other programs. This authority is not redelegable. The SSA shall forward requests for second or subsequent BAFOs on major, selected and other programs to SAF/AQCS for processing to SAF/AQ.

(ii) The staff office responsible for contracting in each major command, FOA and DRU shall forward an annual report to arrive at SAF/AQCS no later than 30 days after the close of the fiscal year. The report shall summarize the data collected under the reporting system required by DFARS 215.611(c)(ii) and any analyses and actions taken in accordance with DFARS 215.611(c)(iii).

5315.612 Formal Source Selection. Air Force policy and procedures for conducting formal source selections are in Appendix AA, Formal Source Selection for Major Acquisitions, and Appendix BB, Source Selection Procedures for Other Than Major Acquisitions.

SUBPART 5315.8--PRICE NEGOTIATION

5315.804 Cost or pricing data.

5315.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(i) Waiver for exceptional cases.

(1) Except as delegated in (2) below, the authority to waive the requirement for cost or pricing data from prime contractors or subcontractors rests with the Assistant Secretary (Acquisition). Process waiver requests through command channels to SAF/AQCP.



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(2) HCAs may waive the requirement for cost or pricing data for subcontracts with the forging industry that are less than \$1 million. This authority may not be redelegated.

5315.804-6 Procedural requirements.

(e)(l) When an offeror refuses to submit cost or pricing data and the contracting officer and the commander of the local activity have exhausted all means available to them to secure the required data from the offeror, the case shall be referred to the MAJCOM director of contracting. The MAJCOM director of contracting shall take appropriate measures to obtain the data. If unsuccessful, a waiver package shall be submitted to SAF/AQCP.

(2) Requests for waiver to certified cost and pricing data shall include the following additional information (when a subcontractor has refused to provide cost or pricing data to a prime contractor, each item of the information required shall cover both the prime contract and subcontract):

(i) Contract type and number, RFP or purchase request order number, including supplemental agreement number;

(ii) A concise description of supplies or services being purchased;

(iii) Any outside influences or time pressures;

(iv) Complete company name and location;

(v) A complete description of the data (FAR 15.804-2) the contractor or subcontractor refuses to submit and the basis for refusal (include all correspondence);

(vi) Names and titles of the contractor and/or subcontractor personnel contacted and the government personnel making the contact; and

(vii) A summary statement of the approval action being requested and the methods to be used to determine reasonableness of cost or price.

5315.805 Proposal analysis.**5315.805-2 Price analysis.**

(d)(l) When a contract action exceeding the small purchase limitation is negotiated based on a commercial catalog or a price list, the contracting officer shall obtain a copy of the operative portion of the catalog or price list before agreement on price. If this is impractical, the contracting officer shall request the list, at that time, and place it in the con-

tract file when received.

(e) Base contracting activities shall require the activity that prepared the government estimate to review its accuracy and provide written review results before contract execution when the lowest acceptable cost proposal varies more than 20% from the government estimate for new negotiated contracts or contract modifications exceeding the small purchase limitation. The contracting officer shall place in the contract file a statement of actions taken to resolve differences between the cost proposed and the government estimate.

5315.805-3(90) Cost analysis. Anticipated decrements, or decrement factors, are the historical differences between vendors' and subcontractors' proposed prices and the actual prices negotiated with those vendors and subcontractors, e.g., the historical average decrement for a specific vendor or the average decrement for a certain commodity or commodity group. When performing cost analysis on material costs based on quotes or estimates, the contracting officer should

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consider anticipated decrements, or decrement factors, that may be achieved by the contractor when the contractor subsequently negotiates the purchase order or subcontract. If a contractor does not include decrement factor information in its initial cost or pricing data submission, the contracting officer should not rely on a subsequent finding of defective pricing but should specifically request decrement factor information to conduct a meaningful analysis (see 5315.806).

5315.805-5(90) Field pricing support . Occasionally, DCAA will ask the contracting office to withdraw its request for field pricing support when prime contract negotiations are completed. However, the request for field pricing support should not be withdrawn if the pricing reviews at the subcontract level have not been completed because this information may be needed to assist the prime contractor in negotiating lower subcontract costs. These lower subcontract costs may be passed on to the Government as savings under flexibly priced contracts or reflected in lower proposed costs for follow-on contracts.

(c)(90) Review of contractor decrement factors. When material costs are based on quotes or estimates, the contracting officer should request the auditor or administrative contracting officer (ACO), as appropriate, to verify that decrement factor information (see 5315.805-3(90)) is current, accurate, and complete, and also determine if proposed decrement factors reflect specific experience with a vendor or an average decrement for a certain commodity or commodity group. For example, if a contractor's estimate for material costs is based on a quote obtained from only one vendor with whom the contractor historically negotiated a 20 percent reduction, it would not be appropriate to use the contractor's business-wide decrement factor of 10 percent.

5315.805-90 Price analysis and review technique for spares/support equipment (PARTS).

(a) PARTS is a pricing technique that provides for review of each line item in a spare parts or support equipment price proposal. When a proposal contains multiple line items, and the contracting officer determines that a detailed analysis of each line item is impractical, the technique described in paragraph (b) below shall be used. Contractor proposals which are not submitted on a line item basis, or include inappropriate allocation of support costs (see FAR 15.812) shall be returned to the contractor for revision.

(b) Under the PARTS methodology, the contracting officer shall ensure that multiple line item proposals are evaluated as follows:

(1) A detailed cost analysis shall be performed on--

(i) Those items where the proposed unit price exceeds

25 percent of the lowest unit price paid for the item at any time within the most recent 12 month period. The proposed prices of all items shall be compared to previous prices paid for that item to accomplish this review; and

(ii) High-dollar value items representing a significant portion of total proposal value. High-dollar value items shall normally have a minimum unit value exceeding the small purchase limitation. The HCA may establish lower dollar thresholds.

(2) Those items not subjected to a detailed cost analysis, as described in subparagraphs (1) above, shall be subjected to a value review to determine if their prices appear to be fair and reasonable. This review shall involve a subjective assessment of each line item price based on information obtained from such sources as illustrated parts breakdowns, pictures, drawings, sketches, functional descriptions, descriptions of the labor, material, and engineering characteristics of the item, and, if possible, a physical inspection of the item. If it appears that the price of an item may not be fair and reasonable, that item shall be subjected to a detailed cost analysis.

(3) A random sample of those items which, on first appearance, are determined to have an apparent fair and reasonable value, shall be selected for a detailed cost analysis by means of random number tables or computer selection routines. Sample size may be determined by judgment based on experience with the contractor, reliability of the contractor's estimating/accounting systems, credibility of proposals, etc., but, in any event, must be statistically representative of the universe of items. There may be limited instances when selective sampling is determined to be more appropriate. If the contracting officer makes such a determination, the justification for using selective sampling shall be documented in the contract file. The results of this analysis shall be used to develop a decrement factor which shall be used in establishing a negotiation position for the low-dollar value items. Any decrement factor developed from the detailed analysis of sampled low-dollar value items shall only be applied to low-dollar value items on that proposal. negotiation positions established for low-dollar value items on an earlier proposal shall not be used on later proposals.

(c) The combination of the analysis efforts described in this subsection, plus other appropriate inputs, shall be used to establish the Government negotiation position for all line item prices, as well as for total price. The price negotiation memorandum shall discuss the PARTS procedures employed by specifying the percentage of proposed value and number of line items subjected to detailed review, criteria for high-dollar/low-dollar value items, and so forth.

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5315.806 Subcontract pricing considerations.**5315.806-1 General.**

(a) If the contractor refuses to provide the results of subcontract reviews and evaluations, or if the contracting officer determines that the reviews and evaluations are so deficient to preclude an adequate analysis and evaluation of the contractor's proposal, the contracting officer shall attempt to secure the subcontract reviews and evaluations and/or elicit corrective action. If the contractor persists in refusing to provide subcontract reviews and evaluations, the contracting officer shall assign below normal values for management and cost criteria under the performance risk factor when using the Weighted Guidelines Method (DFARS 215.971) to establish a profit objective. In addition, the contracting officer should consider withholding the award and refer the matter to higher management for resolution. Contracting officers should consider taking action under DFARS 215.811 when a contractor consistently fails to provide adequate subcontract reviews and evaluations.

(90) If a subcontract represents a significant cost risk to the Government, the contracting officer should consider--

- (1) Directing the contractor to definitize the subcontract prior to completion of prime contract negotiations; or
- (2) Conducting a joint Government/contractor team analysis of the subcontract proposal.

5315.807 Prenegotiation objectives. (a) Before meeting with an offeror to discuss any substantive issues related to a proposed new contract or modification to an existing contract, which is significant to the using organization or program office, the Air Force negotiating team should first meet to ensure that they fully understand the proposal and have identified areas for discussion.

(b) For contract actions subject to the Air Force clearance process (see 5301.90), negotiation objectives shall be documented in accordance with 5301.9008. Also see 5301.9010 regarding the need to brief the business clearance approving and reviewing authorities on negotiation objectives. For contract actions not subject to the 5301.90 clearance process, each major command shall establish procedures for briefing negotiation objectives to management or otherwise providing for management review of objectives before negotiations begin.

(c) Consider briefings when--

- (1) A contract represents significant cost for the contracting office;

(2) A new contract follows contract(s) wherein a contractor's performance has been unsatisfactory or items acquired have performed poorly and required modification and retrofit;

(3) A new contract substantially increases a contractor's annual sales and production volume; or

(4) Costs substantially exceed the original estimate.

5315.808 Price negotiation memorandum (PNM).

(a) The contracting officer shall ensure that all copies of the PNM are marked "FOR OFFICIAL USE ONLY." Distribution of the PNM shall occur only after formal award and contract distribution. Each contracting activity shall establish a system which will assure that copies of PNM are provided in a timely manner to all required recipients.

(b) Each PNM shall address whether similar goods or services have been purchased in the past and shall address the cause of any substantial price difference between the previously purchased item (if any) and the current item. For example, if a quantity change caused the price to increase, explain the reasons for that increase.

5315.810 Should-cost analysis.

(a) The contracting office organizes and manages the effort.

(b) HQ AFMC shall establish dollar thresholds for mandatory application of should-cost on non-competitive production contracts. The authority established to waive mandatory application is not delegable. Should-cost techniques may also be applied to contracts below the mandatory dollar thresholds when the contracting office determines that significant savings can be achieved in comparison to the resources applied to the should-cost. Should-cost analysis should be applied early in the acquisition cycle, preferably the first production, even if the first buy does not exceed the thresholds. Early incorporation of should-cost recommendations by the contractor will maximize program benefits as sufficient follow-on requirements allow investments and implementation cost to be amortized.

(b)(7) The contracting office will seek inputs and participation of the Defense Contract Management Command in the initial planning for any should-cost review involving a DPRO. Should-cost reviews normally are conducted on a plant-wide basis. Prior to performing a review, the contracting activity shall study the documentation of all should-cost analysis and other reviews such as Production Readiness Reviews, Manufacturing Management/Production Capability

Reviews, Contractor Purchasing System Reviews, Contractor Employee Compensation System Reviews and Independent Cost Analysis (ICAs) conducted on the contractor within the last two years. The team should review all logistics considerations, including spare parts requirements.

(e) A formal should-cost report is required. The team chief is responsible for its completion. The report shall contain a complete analysis of the contractor proposal and serve to establish the Government's negotiation objective. The report shall document improvements to be made by the contractor and include a lessons learned section. The PNM shall discuss any recommendations contained in the should-cost report. The formal should-cost report and the PNM shall be submitted to the major command (MAJCOM) should-cost focal point with 45 days after completion of negotiations. The cognizant MAJCOM should-cost focal point shall be the repository for should-cost data.

5315.873 Estimated data prices.

(a) Except as authorized in paragraphs (b) and (c) below, when data are required to be delivered under a contract, the solicitation shall include priced line items for that data. At a minimum, those line items shall provide for separate prices for each major category of data to be delivered. Examples of major categories of data include technical orders, engineering data, and management data. When data to be delivered include acquisition data (data which are being required to allow for the acquisition of an item on a competitive basis), the solicitation shall require separate identification of the price of that data, including data rights necessary for the use of that data for the intended purpose.

(b) Not separately priced data line items (data line items for which no separate price is established, with the result that the prices for those line items are included in the price of hardware or other priced line items) shall only be used in a solicitation or contract when the contracting officer specifically determines that it would not be practical to separately price those items. Such determination shall be approved at a level higher than the contracting officer. The basis for the contracting officer determination shall be documented in the contract file.

(c) Separate line item prices are not required in the following situations and, thus, the determination and approval requirements of paragraph (b) above do not apply:

(1) Research or exploratory development contracts when reports (listed on the DD Form 1423) are the only deliverable item(s) under the contract.

(2) Contracts for the acquisition of commercial products as defined in FAR 11.001.

(3) Solicitations and contracts when the file is documented to show that adequate price competition is anticipated or obtained.

(d) In accordance with Chapter 9.5 of the Armed Services Pricing Manual (ASPM), cost proposal data provided to support proposed prices for data should be analyzed using the over-and-above pricing concept. When large numbers of data items are to be analyzed, the contracting officer should consider using sampling techniques similar to those used for the analysis of spare parts proposals

5315.890 Formula pricing agreements (FPA).

5315.890-1 Description.

(a) Formula Pricing Agreements (FPAs), sometimes referred to as spare parts pricing agreements, are any pricing agreement with a contractor that-

(1) sets forth the pricing methodology for more than one future contract action;

(2) identifies the category(s) of purchases to be covered (for example, F-100 replenishment spares); and

(3) specifies the direct cost inputs and the rates and/or factors to be applied to identified bases plus profit or fee.

(b) FPAs differ from Forward Pricing Rate Agreements (FPRAs) in that an FPRA is usually limited to an agreement on individual rates or factors (including Cost Estimating Relationships (CERs)), applies to items not specified in the agreement, and is required to be used by all buying activities.

5315.890-2 Policy.

(a) Establish FPAs when needed to reduce administrative costs and lead times associated with negotiation of large numbers of contract actions for items that can be identified or described in the agreement.

(b) Only establish FPAs with contractors under Government in-plant contract administration cognizance and having a resident DCAA auditor. (This requirement may be waived by the HCA)

(c) FPAs anticipating individual acquisitions that will exceed the threshold for certified cost and pricing data must be approved by the HCA and shall establish a maximum dollar amount for any acquisition priced using the FPA. Any individual proposal that exceeds the threshold for certified cost and pricing data must use the SF 1411 and be cer-

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tified, accordingly.

5315.890-3 FPA Requirements. All FPAs shall--

- (a) Be in writing and signed by the contracting officer.
- (b) Cover no cost elements that would require discrete estimating and analysis (e.g. direct labor and material costs).
- (c) Identify all rates and factors that are a part of the FPA. An FPA may reference an FPRA(s) as long as it prescribes the effect and treatment of any changes in the FPRA.
- (d) Establish terms and conditions covering application of the agreement, its expiration date and any data requirements for systematic monitoring (e.g. provisions for review of actual cost data) to ensure its continuing validity.
- (e) Provide for cancellation at the option of either party.
- (f) Require the contractor to notify the contracting officer and the cognizant contract auditor of any significant change in its estimating/accounting system or the cost or pricing data and describe the impact on the FPA.
- (g) Require the contractor to identify in each specific pricing proposal where the agreement is used--
 - (1) the FPA and the date of the latest certification of cost or pricing data supporting it; and
 - (2) any items in the proposal that are not priced under the agreement.
- (h) Provide that--
 - (1) the FPA may not be used if the contractor's purchasing, estimating or accounting system are disapproved by the Government; and
 - (2) the contracting officer, or designated representative, may perform detailed cost or price analysis on random samples of proposed items and/or items that have unit prices that are significantly higher than previous buys.
- (i) Be supported by certified cost or pricing data (see FAR 15.804) and a signed certificate of current cost or pricing data that is submitted when agreement on the FPA is reached (and annually thereafter).
- (j) Provide that contractual documents for items priced using the FPA, include--
 - (1) the statement at FAR 52.215-22, "Price Reduction

for Defective Cost or Pricing Data;" and

- (2) a clause incorporating the FPA by reference.

(k) Be based on a pricing methodology that ensures that unit prices are in proportion to the item's base cost (see FAR 15.812) and that prices may be adjusted, if it is found that--

- (1) cost or pricing data supporting the FPA was not accurate, current or complete;
- (2) the contractor failed to comply with 5315.890-2(c); or
- (3) the price was developed through incorrect application of the FPA.

5315.890-4 Responsibilities.

- (a) Each Major command using FPAs shall--
 - (1) Establish appropriate approval levels for FPAs;
 - (2) Maintain a list of FPAs that identifies each company and the group of items covered under each FPA;
 - (3) Conduct periodic reviews of FPAs and contract actions priced using FPAs; and
 - (4) Establish agreements with appropriate contract administration offices to provide field pricing support, negotiation support, and administrative support of Air Force FPAs.
- (b) Contracting officers shall--
 - (1) negotiate FPAs in compliance with the requirements at 5315.890-2. This responsibility may be delegated to the ACO;
 - (2) obtain field pricing support, including contract audit and technical reviews, in the evaluation of FPAs;
 - (3) prepare a price negotiation memorandum covering the pricing factors used in each FPA;
 - (4) request CAO participation in negotiations;
 - (5) semi-annually, request (through the ACO) the DCAA resident auditor to determine if the contractor is complying with the FPA procedures;
 - (6) annually, review each FPA to determine its validity

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by evaluating recorded cost data, and renegotiate the FPA if appropriate;

(7) determine the effect changed conditions may have on an FPA's validity. Cancel an FPA when appropriate and notify all interested parties;

(8) not use a cancelled FPA;

(9) at a minimum, conduct the following evaluation of each proposal under an FPA, in order to ensure that the FPA applies to the items and to determine the reasonableness of discrete cost inputs and any non-covered costs (e.g. nonrecurring costs); and

(10) compare proposed prices with prior prices, government estimates and PR estimates to ensure reasonableness. Use of an FPA does not relieve the contracting officer of the responsibility to ensure that the price is fair and reasonable;

(11) conduct detailed cost analysis on random samples of proposed items and/or items that have unit prices that are significantly higher than previous buys; and

(12) ensure that individual contract actions priced using the FPA comply with the terms of the FPA.

5315.890-5 FPAs negotiated by other DOD agencies. Air Force activities may use FPAs of other agencies only if they comply with 5315.890-2.

5315.891 Followup on Contract Audit Reports.**5315.891-1 General.**

(a) This section constitutes Air Force implementation of DoD Directive 7640.2, "Policy for Followup on Contract Audit Reports," dated February 12, 1988, which establishes certain responsibilities, reporting requirements, and followup procedures for contract audit reports issued by the Defense Contract Audit Agency (DCAA).

(b) The contracting officer is responsible for reaching agreement with the contractor, and has wide latitude and discretion in that regard. Accordingly, the Air Force contract audit followup system is structured in consonance with the independent, decision-making role of the contracting officer and the financial advisory role of the contract auditor.

(c) Contracting officers shall give full consideration to contract audit advice and shall pursue timely and proper resolution and disposition of contract audit reports.

Resolution of contract audit reports, other than preaward reports, is required within six months of report issuance by OMB Circular A-50. Disposition should take place as soon as possible after resolution.

5315.891-2 Definitions.

"Adverse opinion report" means an audit report containing the specific statement that the contractor's proposal is not acceptable as a basis for negotiation of a price.

"Closed audit report" means an audit report that has been disposed of by the contracting officer and closed for followup tracking purposes. (See the definition for "Disposition of contract audit reports" below.)

"Contract audit report" means the contract auditor's written advice to a contracting officer advocating specific action on the part of the contracting officer or contractor and/or including highly qualified or adverse opinion information. An audit report could include amounts questioned or disapproved, exceptions to a contractor's system or operations (usually expressed in terms of cost avoidance), recommended price adjustments, or notification of a contractor's noncompliance with cost accounting standards.

"Costs questioned" means--

(a) The amount questioned in the audit report that the reporting contracting officer or auditor has the responsibility and authority to dispose of. Audit reports on final indirect cost rates (overhead) will typically have costs questioned relating to corporate allocations and costs questioned relating to divisional expenses. The divisional administrative contracting officer (ACO) should list only the amount questioned which pertains to divisional expenses that he/she is responsible for negotiating, and the corporate ACO should report only the costs questioned at the corporate level which he/she is responsible for negotiating. Each contracting officer should list the total amount questioned that is subject to negotiation at that level, regardless of contract mix or percentage of commercial business;

(b) All costs set aside as "unsupported," qualified, and/or adverse opinion amounts, unless such amounts are disclaimed by the auditor because of requested assist audits or need for technical evaluation. The contracting officer shall not report such amounts until the assist audit/technical evaluation is incorporated by a supplemental report. At time of receipt, the amount questioned and the report date shall be revised for correction in the next semiannual report; and

(c) Costs monetized as a result of a technical evaluation that are incorporated into the audit report.

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"Costs questioned sustained" means that portion of the costs questioned/qualified by the auditor which is upheld as a result of actions taken by either the contractor or the contracting officer.

"Disclaimed opinion report" means any audit denying the validity of a proposal when the scope of audit was so restricted that an audit opinion cannot be justified.

"Disposition of contract audit reports" occurs when--

(a) The contractor implements the audit recommendations or the contracting officer's decision;

(b) The contracting officer negotiates a settlement with the contractor and a contractual document has been executed;

(c) The contracting officer issues a final decision pursuant to the "Disputes" clause and 90 days elapse without contractor appeal to the Armed Services Board of Contract Appeals (ASBCA). Should the contractor appeal to the U.S. Claims Court within the 12 months after final disposition, the audit must be reinstated as an open report in litigation;

(d) A decision has been rendered on an appeal made to the ASBCA or U.S. Claims Court and any corrective actions directed by the Board or Court have been completed and a contractual document has been executed;

(e) Audit reports have been superseded by, or incorporated into, a subsequent report; or

(f) Any corrective actions deemed necessary by the contracting officer have been taken, so that no further actions can be reasonably anticipated.

In the case of divisional overhead audit reports, such reports may be considered disposed of when the contracting officer has negotiated all local issues with the contractor and a written agreement detailing the results of the negotiations has been signed by both the contracting officer and the contractor and distribution has been made to DCAA. A cost accounting standards noncompliance report is disposed of when the audit report on the related cost impact statement, if required, is received by the contracting officer.

"Highly qualified opinion report." Qualified audit reports vary according to circumstances, but typically indicate a significant inadequacy in the cost or pricing data, denial of access to records, or noncompliance with cost accounting standards or acquisition regulations. For the purpose of followup coverage under DoD Directive 7640.2, the audit report must specifically state that the results of audit are highly qualified. (Underscoring added for emphasis.)

"Litigation." An audit report is considered to be in litigation any time an appeal has been filed with the ASBCA or with any court concerning an audit recommendation/qualification identified in the audit report for a specific contract or. An audit report is also in litigation whenever the Government appeals a decision of the ASBCA or U.S. Claims Court, or there is other ongoing judicial action as a result of a contract audit.

"Open audit report" means an audit report that has not been disposed of.

"Overaged" means an audit report that has not been disposed of and is over 12 months old (from date of issuance) on the "as of" date of the status report.

"Resolution" means--

(a) For reportable audits, the point at which the auditor and the contracting officer agree on the action to be taken on audit report findings and recommendations/qualifications, or, in the event of disagreement, when the contracting officer determines a course of action after following MAJCOM/local contracting activity prenegotiation documentation and review procedures. Resolution must be supported by specific written documentation in the file;

(b) In the case of auditor determined final indirect cost rates, resolution is achieved when an agreement is reached between the auditor and the contractor, or when an agreement cannot be reached, a decision is rendered by the cognizant ACO after obtaining additional review, if required; or

(c) For preaward audits, the point at which an agreement is reached, a proposed negotiation objective is modified during review, a contract price is negotiated, or the proposed award is cancelled, whichever occurs first.

5315.891-3 Responsibilities.

(a) The Deputy Assistant Secretary (Contracting), SAF/AQC, is the designated contract audit followup official responsible for managing the Air Force's contract audit followup program.

(b) MAJCOM directors of contracting shall--

(1) Establish procedures to monitor and ensure the proper, timely resolution and disposition of contract audit reports within their commands;

(2) Establish procedures for the maintenance of up-to-date records on all reportable contract audits, from receipt through disposition. For open reports, this includes written milestone plans comprised, as a minimum, of target

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dates for resolution and disposition;

(3) Establish procedures within their commands to ensure that there will be appropriate review of prenegotiation objectives (for the proposed disposition of both preaward and postaward contract audit reports) which are significantly different from the DCAA audit recommendations;

(4) Ensure that acquisition personnel in their commands are adequately trained in the utilization of contract audit reports and the requirements of the contract audit followup program;

(5) Ensure that performance appraisals of appropriate acquisition officials reflect their effectiveness in resolving and disposing of audit findings and recommendations in a timely manner, while fully protecting the Government's interest;

(6) Establish procedures to ensure that the MAJCOM's semi-annual contract audit followup status report submission is prepared in accordance with 5315.891-5; and

(7) Direct periodic evaluations of the commands' contract audit followup systems to determine whether they are adequate and result in timely, appropriate resolution and disposition of audit reports.

(c) The following is for information purposes only and is not directive. DoD Directive 7640.2 requires DCAA to--

(1) Provide timely and complete responses to any contracting officer or review official who requests factual information or further audit opinions regarding the audit issues under review;

(2) Provide timely and complete support to the DoD/IG or to any internal audit organization reviewing a DoD component's contract audit followup system, in accordance with DoD Instruction 7600.2;

(3) Use feedback provided by contracting officials, including final disposition and negotiation memoranda, to analyze and improve audit procedures and practices;

(4) Identify those contract audit reports which it believes are reportable under DoD Directive 7640.2 to the cognizant contracting office at the time of issuance, and provide summary records (i.e., control logs) of all such reports to the appropriate contracting activities at least semiannually. These semiannual control logs shall be forwarded to the appropriate contracting activities not later than 21 calendar days following the control log cutoff dates of February 28 and August 31, respectively. The

control logs shall include the activity address numbers (DFARS Appendix G) code for each report issued; and

(5) Forward all audit reports on auditor determined final indirect cost rates to the cognizant ACO for resolution when agreement cannot be reached with the contractor.

5315.891-4 Tracking of contract audit reports.

(a) Contracting activities shall track all contract audit reports, but only need to report those audits specified in 5315.891-5(b). For the nonreportable contract audits specified in 5315.891-5(c), tracking may be accomplished using records maintained in official contract files.

(b) Every Air Force contracting office shall appoint a contract audit followup focal point. The designated focal point shall maintain a log of all reportable contract audit reports received by the activity for which that activity has disposition responsibility and shall track and report the status of the reportable contract audit reports from the date of receipt through final disposition. The designated focal point shall maintain this information on a current basis and shall ensure that the information is adequate to serve as the source document for the semiannual contract audit followup status reports. Audit reports shall be dropped from the tracking system in the reporting period following closure.

(c) The audit tracking information shall be accumulated and maintained centrally at a level no higher than the AFMC direct reporting unit, and at command headquarters for all other MAJCOMs. The activity shall update this information at least monthly. For auditor determined final indirect cost rate reports, a report is considered received for followup tracking purposes when it is forwarded by the auditor to the cognizant ACO for resolution and disposition.

5315.891-5 Reporting of contract audit reports.

(a) Although DCAA will identify reportable contract audits, the ultimate decision on reportability resides with the procurement or contract administration office having resolution/disposition responsibility.

(b) Reportable audits include--

(1) Those containing findings and recommendations, whether or not the findings are qualified, covering estimating system surveys, accounting system reviews, defective pricing reviews, and cost accounting standards (CAS) noncompliance issues (including CAS disclosure statements if they contain noncompliance issues).

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- (2) Those covering internal controls, operations audits, incurred costs, settlement of final indirect cost rates, final pricing submissions, termination settlement proposals, equitable adjustment claims, hardship claims, and escalation claims, if the reported costs or rates questioned or qualified equal \$100,000 or more.
- (3) Those final indirect cost rate cases where the auditor cannot reach an agreement with the contractor and forwards the audit report to the cognizant ACO for final decision.

(c) Nonreportable audits include those covering preaward proposals; forward pricing labor, overhead, and other advance rate proposals; progress payments; preaward surveys; proposals for change orders or modifications; assist audits; and closing statements. Should such audit reports contain reportable findings and recommendations, they are not to be treated as reportable; however, if deemed appropriate, the contracting officer should ask DCAA to issue a separate audit report addressing the reportable issues in detail. Additional nonreportable audits include reports containing only positive findings and recommendations, such as those recommending that a contractor's proposed cost accounting standards change be approved; any interim report that will be incorporated into a future report; and final indirect cost audits that are auditor determined, if the auditor is successful in reaching an agreement on the rate(s) with the contractor.

(d) Each MAJCOM shall prepare semiannual status reports, using the formats for open and closed audits shown at Illustrations 5315-1 and 5315-2. The reports shall cover the semiannual periods ending March 31 and September 30 and shall be submitted to SAF/AQCP within 15 calendar days after the end of the period. Items shall be removed from the tracking and reporting system in the period following that in which they appeared on the status report as being closed.

(e) The required semiannual MAJCOM status report submissions shall provide the following data: (Negative reports are required.)

(1) For open reports. The report number, report date, contractor name, type of audit, costs questioned or cost avoidance, date of request by an investigative agency for deferral of action on a report (when applicable), ASBCA docket number or U.S. Claims Court case number when the report is in litigation, whether the report is resolved or unresolved, resolution date or resolution target date, disposition target date, and reporting activity.

(2) For reports closed during the reporting period. The report number, report date, contractor name, type of audit, date of disposition, costs questioned or potential cost avoidance, costs questioned or cost avoidance sustained,

and reporting activity. Costs questioned and sustained shall be reported as zero when a report is superseded, replaced, or incorporated into a new report. In such cases, the Date of Disposition column should show the new report number with its date of issuance. For closed defective pricing audits, the costs questioned that are reported shall be reduced by the amount of any offsets proposed by the contractor which have been audited and accepted in writing by DCAA.

(f) Initial target dates for resolution and disposition shall be within six months or twelve months, respectively, of the audit report issuance date. These target dates shall be revised as required, but in no event shall such target dates be left unchanged if they are past-dated on the cutoff date of the instant semiannual status report.

(g) The MAJCOM status report submissions shall denote the reporting activity for each audit listed, using the corresponding six digit activity address code listed in DFA R S Appendix G. Activities not assigned a number shall report by organization and address. MAJCOMs using an automated reporting system may satisfy this requirement by using their own location codes, as long as an explanation is furnished with the submission.

(h) The MAJCOM status report submissions shall identify the type of audit using the following codes (MAJCOMs reporting via an automated system may also satisfy this requirement by using their own codes for audit type, provided an explanation is furnished with the submission):

<u>Code</u>	<u>Type of Audit</u>
A	Estimating System Survey
B	Accounting System Review
C*	Internal Control Review
D	Defective Pricing Review
E	Cost Accounting Standards Noncompliance
F*	Operations Audit
G*	Incurred Costs
H*	Settlement of Final Indirect Cost Rate
I*	Final Pricing
J*	Terminations
K*	Equitable Adjustment Claims
L*	Hardship Claims
M*	Escalation Claims

* Reported costs or rates questioned/qualified must equal \$100,000 or more.

(i) MAJCOMs shall make every possible effort to ensure the completeness and accuracy of their semiannual submissions, including verification against their prior status

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report submissions and the control logs of reportable audits issued by DCAA. In particular, the MAJCOM shall place special emphasis on confirming the reporting accuracy of any audit listed as unresolved and over six months old. SAF/AQCP shall accumulate the MAJCOM reports and submit the consolidated Air Force report to the Deputy Assistant Secretary (Contracting), SAF/AQC, for signature and transmittal to the DOD/IG within 30 calendar days after the end of the reporting period.

(j) Contracting activities or MAJCOMs which discover inaccurate or incomplete data in their semiannual reports shall submit corrected data through channels to SAF/AQCP as soon as possible.

(k) The Status Report on Specified Contract Audit Reports has been assigned Report Control Symbol DD-IG(SA) 1580.

5315.891-6 Resolution of contract audit reports. (a) Contracting officers shall make every possible effort to resolve all reportable contract audits within six months of issuance.

(b) MAJCOM/local contracting activity procedures shall provide for documentation and independent review of proposed prenegotiation objectives (for the disposition of both preaward and postaward contract audits) which are significantly different from the DCAA audit recommendations. For most contract audits, the contracting officer should obtain contractor comments and such technical advice as deemed necessary, prior to formulating a prenegotiation position. The contracting officer shall share this additional information with the auditor, as appropriate. If additional audit effort is required because of data presented by the contractor, the contracting officer shall promptly request such a review. (DCAA is required by DoD Directive 7640.2 to give priority to providing this necessary additional audit support.) If no additional audit effort is deemed necessary, the contracting officer shall communicate with the auditor on the proposed disposition of the case, as necessary, to reach a fully informed decision. In documenting the prenegotiation position, the contracting officer should indicate whether the audit recommendations were accepted or, if not, whether the auditor has revised them. If the auditor agrees that a reduction in the applicable costs questioned is appropriate, the contracting officer shall reduce the costs questioned amount being reported for that audit accordingly. When the contracting officer disagrees with the audit position, the contracting officer's prenegotiation documentation should include the rationale for not accepting the audit advice. The post-negotiation documentation should include a summary of the field pricing report recommendations and the reasons for any pertinent variances from those recommendations.

(c) For auditor determined indirect cost rates, the auditor will

seek agreement with the contractor upon completion of the audit. If agreement is reached, the contractor and auditor will execute a written understanding setting forth the final rates. If agreement is not reached, the auditor will issue a notice of costs suspended and/or disapproved, and advise the contractor of its right to submit a claim to the ACO for any disapproved costs. If the contractor submits a written objection to the ACO, the ACO may communicate further with the contractor in order to reach an agreement. If the ACO agrees with the audit recommendations, he/she shall issue a final decision. If the ACO disagrees with the audit recommendations, he/she shall comply with MAJCOM/local contracting activity procedures for documentation and review prior to disposition.

5315.891-7 Disposition of contract audit reports.

(a) Reportable contract audits should normally be disposed of within 12 months after issuance. Overaged audit reports shall receive heightened management attention including, if necessary, the assignment of additional resources.

(b) Explicit and timely documentation and feedback on the final disposition of audit reports are essential. Therefore, the contracting officer shall promptly prepare a memorandum covering the disposition of all reports. The memorandum shall discuss the disposition of all recommendations and questioned/qualified amounts, including the underlying rationale for such dispositions. The contracting officer shall provide a copy of the memorandum to the cognizant contract auditor before a report may be closed.

(c) Existing documentation, such as a price negotiation memorandum or a written overhead negotiation memorandum, should be used, when applicable, to meet the requirements of (b) above. For all other dispositions, the contracting officer shall prepare a similar document for feedback purposes. To ensure that the final disposition of all audit reports is properly accounted for, the contracting officer shall notify the cognizant DCAA office in writing of the cancellation of any acquisition action or of any unsuccessful offerors not receiving award of the contract or grant for which an audit report was issued.

5315.891-8 Recovery of funds. Policies regarding the DoD credit management and debt collection program, as it relates to contract debts, are contained in DoD Directive 7045.13, and FAR and DFARS Subpart 32.6. Any amount found potentially due to the Government as a result of a contract audit is to be finally determined by the contracting officer either negotiating a settlement with the contractor or issuing a unilateral decision when negotiations prove fruitless. Upon completion of either action, the contracting officer shall make a prompt written demand for payment, citing the amount due, with a copy of the demand letter provided to the payment office listed in the contract. The demand letter should include a notice that any amount not paid within 30 days from the date of the demand letter will accrue interest from that date at the prevailing

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Treasury Rate (Parts 32 of the FAR and DFARS provide specific instructions for demand letters). General ledger accounts for recording accounts receivable and collections are detailed in Chapter 33 and Appendix B of DoD 7220.9-M.

5315.891-9 Coordination with other agencies. The cognizant contracting office responsible for acting on contract audit reports that affect contracts of other Government agencies shall inform the affected organizations of such actions.

5315.891-10 Contract audit followup for GAO reports.

(a) GAO audit reports which disclose contract pricing issues and are issued directly to the buying activity shall be tracked and reported in accordance with the procedures set forth in 5315.891. Contracting officers shall provide--

(1) An initial response to the GAO within 60 days of receipt of the audit report; and

(2) A copy of the initial response and the disposition documents, simultaneously, to the following:

(i) SAF/ACR, Room 4D-162, Washington, D.C. 20301-1900.

(ii) SAF/AQCP, Room 4C-251, Washington, D.C. 20330-1000.

(iii) Office of the Inspector General, Department of Defense, Attention: DAIG, GAO Report Analysis, Room 555, 400 Army Navy Drive, Arlington, VA 22202.

approved by SAF/AQCP. Submit legible copies of DD Form 1547 to--

645 C-CSG/SCOS

2721 Sacramento Street

Wright-Patterson AFB, OH 45433-5061

(b) Completed DD 1547s that contain classified information in blocks 1 or 4 through 12 shall not be forwarded to C-CSG/SCOS, but retained in the contract file.

SUBPART 5315.9--PROFIT

5315.903 Contracting officer responsibilities.

(b)(3)(ii). The authority to approve the use of an alternate structured approach in lieu of the Weighted Guidelines Method is delegated to the Major command, FOA, and DRU directors of contracting. The contracting officer shall forward a copy of approved alternate structured approaches to SAF/AQCP, Washington, D.C. 20330-1000.

5315.975 Reporting profit and fee statistics.

(a) AFMC activities shall prepare DD Forms 1547 using the Weighted Guidelines (WGL) microcomputer program